BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

NORMA P. SOSA Claimant	)	
VS.	)	Docket No. 1,020,302
DOLD FOODS, INC. Self-Insured Respondent	)	

ORDER

Respondent requests review of the February 14, 2005 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleged repetitive injury each and every workday to her upper and lower back as well as her neck. Respondent denied claimant was injured at work or provided timely notice of a work-related injury. Instead respondent notes claimant sought time off from work and applied for short term disability. The paperwork for such disability was signed by claimant and indicated that she had not suffered a work-related injury. Moreover, a supervisor testified that at that time claimant had indicated to him that she was taking time off for an injury suffered at her home.

The Administrative Law Judge (ALJ) found the claimant suffered accidental injury arising out of and in the course of her employment and provided timely notice.

The respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment and whether timely notice was provided.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant alleged that early in 2004 she began to experience back pain. As she continued working her pain worsened and she was seeking medication from the plant nurse on a daily basis. Claimant was provided ibuprofen, but her pain worsened to the point that she sought medical treatment.

Claimant went to Dr. Hector Fernandez on May 10, 2004. His medical record indicates claimant complained of back pain with an onset of a week with no work accident. Claimant then was taken off work and applied for short term disability. The claimant signed the form, which indicated that her condition was not related to work. A production supervisor for respondent, James F. Stafford, testified that in May of 2004 the claimant told him that she was going to be off work due to an injury she had suffered at her home.

Claimant renewed her application for short term disability in June of 2004. She also applied for insurance benefits through her husband's health insurance carrier. That form contained numerous inquiries about the nature of injury and whether the condition was work-related but claimant did not respond to those questions.

While off work on short term disability, the claimant went to the Via Christi Rehabilitation Center and records from that facility simply noted claimant had suffered no known injuries. Claimant received further treatment from Dr. Bernard T. Poole beginning in August of 2004. The initial visit on August 4, 2004 contained a notation that there was no known injury. A December 2, 2004 notation in Dr. Poole's office notes states, "Dr. Hearon's office called to say patient reports this as work injury. No reference to this in our records."[1]

Although claimant testified that one Saturday she had complained to a supervisor that her back was hurting, she later testified that when she went to Dr. Fernandez she did not mention anything about work. It is inconsistent for claimant to say she provided notice to a supervisor that her work was hurting her back and then to agree that when her back pain worsened to the point that she sought medical treatment she did not mention work.

Based upon the preponderance of the evidence it cannot be said that claimant's initial problems were related to work, nor that she provided respondent with notice of a work-related injury. The testimony of Mr. Stafford that claimant denied a work-related injury is corroborated by the medical records and various applications for short term disability which failed to mention a work-related injury.

However, it is significant to note that Dr. Poole's medical record dated August 30, 2004 indicated that claimant had a significant improvement such that he released her to return to light work with restrictions. After returning to work with respondent the claimant returned to Dr. Poole with a flare-up of her conditions. At claimant's final office visit with

[1] P.H. Trans., Cl. Ex. 1 at 1.

Dr. Poole on December 1, 2004 the doctor noted; "The patient basically states that as long as she does not do particular activities the pain in her neck and shoulder is better, but that virtually any type of work she is asked to do causes her neck and right shoulder to have intolerable pain and she simply stops."[2]

Claimant testified that her current work activities caused back pain and cramping in her right hand. Mr. Stafford agreed that after claimant returned to work in November of 2004 he became aware that claimant's current job was causing her discomfort. Apparently some job accommodations or job changes were then provided to claimant.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[3]

By the barest of margins, the Board concludes claimant has met her burden of proof to establish that upon her return to work in November of 2004, she intensified her preexisting conditions and suffered a work-related injury. Mr. Stafford agreed that he was aware that upon claimant's return to work her job was causing her discomfort. Accordingly, claimant has met her burden of proof that she provided notice.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 14, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2005.

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BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Douglas D. Johnson, Attorney for Self-Insured Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

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[2] *Id*.

[3] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).